

Meeting Summary
Motor Vehicle Dealer Board
Monday, May 13, 2013

Chairman Rick Holcomb called the Dealer Board meeting to order at 12:22 p.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 16 Board members present. Present were members Andy Alvarez, Ted Bailey, Roy Boswell, Lynn Hooper, Art Hudgins, Brian Hutchens, Wanda Lewark, Chip Lindsay, Matt McQueen, Thomas Moorehead, George Pelton, Kevin Reilly, Joe Tate, Jimmy Whitten and Tommy Woodson. (Absent: Ronald Kody, Rodney Williams and Sally Woodson). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Ann Majors, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon was the recording secretary.

PUBLIC COMMENT

There was no public comment.

The March 11, 2013 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Chairman Tommy Woodson summarized discussions held and actions that were taken during the Committee Meeting.

- **Metro Auto Collection, LLC and Fatemah Masumi.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Metro Auto Collection, LLC and Fatemah Masumi for alleged violations of VA Code Sections 46.2-1529, 46.2-1532, 46.2-1548, 46.2-1550 and 46.2-1575(2). Based on due consideration, the Board believes a civil penalty should be assessed against Metro Auto Collection, LLC and Fatemah Masumi. The Board hereby assesses a \$1,250 civil penalty against Metro Auto Collection, LLC and Fatemah Masumi; and based on due consideration, the Board believes that Ms. Masumi's dealership should be re-inspected by June 18, 2013 and that the inspection must be satisfactory and if it is not satisfactory, all licenses and certificates issued by the Board to Ms. Masumi should be suspended until such time as she has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Ms. Masumi's dealership by June 18, 2013 and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Ms. Masumi until such time as she has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Ms. Masumi in running her dealership. The Board mandates that Ms. Masumi successfully complete the dealer-operator course by November 13, 2013. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Ms. Masumi by the Board until such time Ms. Masumi has successfully completed the course.

Matt McQueen seconded. The motion carried unanimously.

- **Blue Ridge Auto Sales and Abdul A. Nahibkhil.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Blue Ridge Auto Sales and Abdul A. Nahibkhil for alleged violations of VA Code Sections 46.2-1515, 46.2-1529, 46.2-1532, 46.2-1535, 46.2-1537, 46.2-1547, 46.2-1548, 46.2-1550, 46.2-1550 (2), 46.2-1559, 46.2-1574 and 46.2-1575 (2). Based on due consideration, the Board believes a civil penalty should be assessed against Blue Ridge Auto Sales and Abdul A. Nahibkhil. The Board hereby assesses an \$8,000 civil penalty against Blue Ridge Auto Sales and Abdul A. Nahibkhil; and based on due consideration, the Board believes that Mr. Nahibkhil's dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Nahibkhil should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Nahibkhil's dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Nahibkhil until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Nahibkhil in running his dealership. The Board hereby suspends all licenses and certificates issued by the Board to Mr. Nahibkhil until such time Mr. Nahibkhil successfully completes the dealer-operator class.

George Pelton seconded. The motion carried unanimously.

- **Montgomery Trailer Sales and Harold Montgomery.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Montgomery Trailer Sales and Harold Montgomery for alleged violations of VA Code Sections 46.2-1547 and 46.2-1575 (18). Based on due consideration, the Board believes a civil penalty should be assessed against Montgomery Trailer Sales and Harold Montgomery. The Board hereby assesses a \$1,000 civil penalty against Montgomery Trailer Sales and Harold Montgomery; and based on due consideration, the Board believes that Mr. Montgomery's dealership should be re-inspected and that the inspection must be satisfactory and that all licenses and certificates issued by the Board to Mr. Montgomery should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Montgomery's dealership and if the inspection is not satisfactory the Board suspends all licenses and certificates issued by the Board to Mr. Montgomery until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative.

Art Hudgins seconded. The motion carried unanimously.

- **Today's Auto and Eldon L. Smith.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Today's Auto and Eldon L. Smith for alleged violations of VA Code Sections, 46.2-1529, 46.2-1539, 46.2-1544 and 46.2-1575 (1) and (2). Based on due consideration, the Board believes a civil penalty should be assessed against Today's Auto and Eldon L. Smith. The Board hereby assesses a \$2,000 civil penalty against Today's Auto and Eldon L. Smith; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Smith in running his dealership. The Board mandates that Mr. Smith successfully complete the dealer-operator course by November 13, 2013. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Smith by the Board until what time Mr. Smith has successfully completed the course.

Ted Bailey seconded. The motion carried unanimously.

- **Motorvation and John H. Almstead.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Motorvation and John Almstead for alleged violations of VA Code Sections 46.2-1510, 46.2-1529, 46.2-1547, 46.2-1548, 46.2-1575 (2), (3) and (7). Based on due consideration, the Board believes a civil penalty should be assessed against Motorvation and John Almstead. The Board hereby assesses a \$6,000 civil penalty against Motorvation and John Almstead; and based on due consideration, the Board believes all licenses and certificates issued by the Board to Mr. Almstead should be revoked.

Joe Tate seconded. The motion carried unanimously.

- **Five Star Used Auto, Inc. and Nidal Motii.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Five Star Used Auto, Inc. and Nidal Motii for alleged violations of VA Code Sections 46.2-1539, 46.2-1575 (1) and 46.2-1575 (9). Based on due consideration, the Board believes penalty should be assessed against Nidal Motii. The Board hereby assesses a \$3,500 civil penalty against Nidal Motii; and based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Motii should be revoked. The Board hereby suspends revokes all licenses and certificates issued by the Board to Mr. Motii.

Art Hudgins seconded. The motion carried unanimously.

- **Select Cars of Thornburg and Wilmer A. Nunez Villatoro.** Tommy Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Select Cars of Thornburg and Wilmer A. Nunez Villatoro for alleged violations of VA Code Section 46.2-1575 (9). Based on due consideration, the Board believes a civil penalty should be assessed against Select Cars of Thornburg and Wilmer A. Nunez Villatoro. The Board hereby assesses a \$1,000 civil penalty against Select Cars of Thornburg and Wilmer A. Nunez Villatoro; and based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Villatoro should be revoked. The Board hereby revokes all licenses and certificates issued by the Board to Mr. Villatoro.

Matt McQueen seconded. The motion carried unanimously.

- **Quality Auto Group, Inc. and Kevin J. Brown.** Tommy Woodson made the following motion: Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the Motor Vehicle Dealer Board assessed a \$34,000 civil penalty against Quality Auto Group, Inc. and Kevin J. Brown and revoked all licenses and certificates issued by the Board to Quality Auto Group, Inc. and Kevin J. Brown; and Mr. Brown appealed the Board's decision and requested a formal hearing that was conducted on March 22, 2013. The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Quality Auto Group, Inc. and Kevin J. Brown for alleged violations of VA Code Sections: 46.2-1575 (6) and (9). Based on due consideration, the Board believes a civil penalty should be assessed against Quality Auto Group, Inc. and Kevin J. Brown. The Board hereby assesses a \$34,000 civil penalty against Quality Auto Group, Inc. and Kevin J. Brown; and based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Brown should be revoked. The Board hereby revokes all licenses and certificates issued by the Board to Mr. Brown.

Joe Tate seconded. The motion carried unanimously.

- **We Finance Auto and Gary R. Cowand.** Tommy Woodson made the following motion: Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the Motor Vehicle Dealer Board assessed a \$15,000 civil penalty on We Finance Auto and Gary R. Cowand and revoked all licenses and certificates issued by the Board to We Finance Auto and Gary R. Cowand.; and Mr. Cowand appealed the Board's decision and requested a formal hearing that was conducted on March 4, 2013. The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning We Finance Auto and Gary R. Cowand for alleged violations of VA Code Sections, 46.2-1518; 46.2-1529; 446.2-1530; 46.2-1533; 46.2-1537; 46.2-1542; 46.2-1548; 46.2-1550; 46.2-1550.2; 46.2-1559; 46.2-1547; and 46.2-1575 (1), (2), and (18). Based on due consideration, the Board believes a civil penalty should be assessed against We Finance Auto and Gary R. Cowand. The Board assesses a \$3,500 civil penalty against We Finance Auto and Gary R. Cowand. If Mr. Cowand fails to close his dealership by June 7, 2013 as stipulated by his attorney; and based on due consideration, the Board believes that all licenses and certificates issued by the Board to Mr. Cowand should be revoked. The Board hereby revokes all licenses and certificates issued by the Board to Mr. Cowand.

Art Hudgins seconded. The motion carried unanimously.

Licensing Committee

Chairman Jimmy Whitten summarized discussions held and actions that were taken during the Committee Meeting.

- **Sajal Narayan, Salesperson.** Jimmy Whitten made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Sajal Narayan for alleged violations of VA Code Sections 46.2-1550; and 46.2-1575 (6), (9) and (10). Based on due consideration, the Board believes no action should be taken against Sajal Narayan. The Board hereby takes no further action against Sajal Narayan.

Thomas Moorehead seconded. The motion carried unanimously.

- **David W. Neighbors, Salesperson.** Jimmy Whitten made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning David W. Neighbors for alleged violations of VA Code Sections 46.2-1529; 46.2-1550; 46.2-1575 (1), and (9). Based on due consideration, the Board believes a civil penalty should be assessed against David W. Neighbors. The Board hereby assesses a \$2,000 civil penalty against David W. Neighbors; and based on due consideration, the Board believes Mr. Neighbors' license and qualification should be revoked. The Board hereby revokes David W. Neighbors' salesperson license and qualification.

Art Hudgins seconded. The motion carried unanimously.

- **Rodney L. Williams, Salesperson.** Jimmy Whitten made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Rodney L. Williams for alleged violations of VA Code Sections 46.2-1575 (1) and (9). Based on due consideration, the Board believes no action/a civil penalty should be taken/assessed against Rodney L. Williams. Based on due consideration, the Board

believes Mr. Williams' license application should be approved. The Board hereby approves Rodney L. Williams' application for a salesperson license.

Art Hudgins seconded. The motion carried unanimously.

Mr. Williams went on the record indicating that he will not appeal the decision.

- **Reza Azizkhani, Salesperson Applicant.** Jimmy Whitten made the following motion: Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the executive director, under the authority granted by the Motor Vehicle Dealer Board, denied the salesperson license application submitted to the Board by Reza Azizkhani. Mr. Azizkhani appealed the denial and requested a formal hearing; and the Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Reza Azizkhani for alleged violations of VA Code Sections 46.2-1575 (6) and (13). Based on due consideration, the Board believes Mr. Azizkhani's license application should be approved. The Board hereby approves Mr. Azizkhani's application for a salesperson license

Thomas Moorehead seconded. The motion carried unanimously.

Mr. Azizkhani went on the record indicating that he will not appeal the decision.

- **Arthur Gregory, Salesperson Applicant.** Jimmy Whitten made the following motion: Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the executive director, under the authority granted by the Motor Vehicle Dealer Board, denied the salesperson license application submitted to the Board by Arthur Gregory. Mr. Gregory appealed the denial and requested a formal hearing. The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Arthur Gregory for alleged violations of VA Code Section 46.2-1575 (6); (9) and (13). Based on due consideration, the Board believes Mr. Gregory's license application should be denied. The Board hereby denies Arthur Gregory's application for a salesperson license.

Matt McQueen seconded. The motion carried unanimously.

- **Tesla.** Chairman Jimmy Whitten indicated that it was discussed that a special meeting will be conducted on June 3, 2013 to discuss findings and Tesla will be invited.

Advertising Committee

Chairman Kevin Reilly summarized discussions that were held during the Committee Meeting.

Transaction Recovery Fund Committee:

Chairman Lynn Hooper summarized discussions held and actions that were taken during the Committee Meeting.

Scott Kapel and Automix and Du-Shawn K. Hooks and J & C Auto Sales. Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Scott Kapel and Automix and Du-Shawn K. Hooks and J & C Auto Sales. Based on that discussion and the recommendations in these cases, Mr. Hooper made the following motion: Pursuant to VA Code Section 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund ("Fund"), the Board has reviewed and considered the claims submitted for payment from the Fund and based on due

consideration and recommendation of the hearing officer, the Board believes the following claims should be payable from the Fund:

Scott Kapel and Automix	\$17,794.00
Du-Shawn K. Hooks and J & C Auto Sales	\$19,746.45

Jimmy Whitten seconded. (Ted Bailey abstained from J & C) and (Thomas Moorehead voted no on J & C Auto Sales). The motion carried.

Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Ronald E. Witmer and Horton Truck & Equipment, Co. Based on that discussion and the recommendations in these cases, Mr. Hooper made the following motion: Pursuant to VA Code Section 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund ("Fund"), the Board has reviewed and considered the claims submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the following claims should be denied:

Ronald E. Witmer and Horton Truck & Equipment, Co. \$20,000.00

Thomas Moorehead seconded. The motion carried unanimously.

Motion was made by Joe Tate to charge dealers a one-time \$50.00 fee, should the balance of the Fund dip below \$100,000.00. Wanda Lewark seconded. All in favor: 14 (Alvarez, Bailey, Hooper, Hudgins, Hutchens, Lewark, Lindsay, McQueen, Moorehead, Pelton, Reilly, Tate, Whitten, Woodson). Opposed: 2 (Boswell and Holcomb). The motion carried.

Sales Tax Issue: The sales and use tax (titling tax) will increase from 3% to 4% July 1, 2013. The minimum sales and use tax will go from \$35.00 to \$75.00 on July 1, 2013. If the consumers paperwork is in by noon on Saturday, June 29, when the office closes, DMV will work overtime, up to midnight June 30, ensuring those transactions will be taxed the 3%. Two concerns arose when the members indicated what will become of those transactions that are conducted after 12:00 p.m. on Saturday, June 29, 2013 and some dealers are opened on Sundays which June 30th is on a Sunday. General discussion followed.

Motion made by Rick Holcomb for the executive director to write a letter to Attorney General Cuccinelli that the Board supports the position that when calculating the sales and use tax, the rate in effect at the time of sale should be used and not the rate that in effect when the vehicle is titled. Kevin Reilly seconded. The motion carried unanimously.

OLD BUSINESS

There was no old business.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

There was no new business.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

Executive Director's Report. Bruce Gould indicated that the General Assembly approved an employee pay raise. The Governor's Transportation Conference will be in Richmond, Virginia this year and hosted by the Department of Rail and Public Transportation. Should any member have any general concepts for the General Assembly to bring them to the July meeting.

The next meeting will be scheduled for July 8, 2013.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Holcomb adjourned the meeting at 2:03 p.m.

Meeting Summary
Dealer Practices Committee
Monday, May 13, 2013

Chairman Tommy Woodson called the Dealer Practices Committee meeting to order at 9:00 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Ted Bailey, Chip Lindsay, Matt McQueen, Thomas Moorehead, Kevin Reilly, Joe Tate and Jimmy Whitten. (Absent: Ron Kody, Rodney Williams and Sally Woodson). Other Board members present: Rick Holcomb, Andy Alvarez, Lynn Hooper, Art Hudgins, Brian Hutchens, George Pelton, Wanda Lewark and Roy Boswell. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Ann Majors, Frank McCormick and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The March 11, 2013 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **Metro Auto Collection, LLC and Fatemah Masumi.** On February 22, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1529 (Dealer records), 46.2-1532 (Odometer disclosure statements), 46.2-1548 (Transferable license plate), 46.2-1550 (Use of dealer plates) and 46.2-1575(2) (Noncompliance to written warning). Based on the information provided at the conference, the hearing officer recommended a civil penalty of \$1,250 be assessed and that a re-inspection be performed as soon as possible. Should there be any repeat of the same violations, it was recommended that all licenses and/or certificates of dealer registration and qualification be suspended until the dealership comes into full compliance.

Sayed Masumi was present and spoke on behalf of Ms. Masumi.

Motion was made Matt McQueen to accept the hearing officer's recommendation, a follow-up inspection within 30 days and to also successfully complete the Dealer-Operator course. Joe Tate seconded. The motion carried unanimously.

- **Blue Ridge Auto Sales and Abdul A. Nahibkhil.** On January 24, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1515 (Display of license; change of location), 46.2-1529 (Dealer records), 46.2-1532 (Odometer disclosure statements), 46.2-1535 (Advertisers), 46.2-1537 (Prohibited solicitation and compensation), 46.2-1546 (Registration of dealers; fees), 46.2-1547 (Dealer license plates), 46.2-1548 (Transferable license plates), 46.2-1550 (Use of dealer's license plates), 46.2-1550 (2) (Issuance and use of temporary transport plates), 46.2-1559 (Records to be kept by dealers; inspection), 46.2-1574 (Acts of officers, directors, partners and salespersons) and 46.2-1575 (2) (Noncompliance to written warning). Based on the information provided at the conference, the hearing officer recommended a suspension of all licenses, certificates of dealer registration or qualification for a period of three months. Before allowing them to re-open, Mr. Nahibkhil must successfully complete the Dealer-Operator course. It was further recommended that Mr. Nahibkhil and Blue Ridge Auto Sales be assessed a civil penalty of \$8,000.00.

Motion was made by Joe Tate assess a civil penalty of \$8,000, has a successful inspection, if not satisfactory, then a suspension until it is satisfactory and to complete the Dealer-Operator course. Thomas Moorehead seconded. The motion carried unanimously.

- **Montgomery Trailer Sales and Harold Montgomery.** On January 24, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1547 (Insurance required) and 46.2-1575 (18) (Failure to maintain automobile liability insurance). Based on the information provided at the conference, the hearing officer recommended that a civil penalty of \$2,000 be assessed. It was further recommended that all licenses and certificates of dealer and qualification as well as sales licenses for a period of six months.

Motion was made by Kevin Reilly to assess a civil penalty of \$1,000 and for all licenses and certificates to be suspended until the dealership has a satisfactory inspection. Joe Tate seconded. The motion carried unanimously.

- **Today's Auto and Eldon L. Smith.** On March 26, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-617 (Sale of vehicle without certificate of title), 46.2-1529 (Dealer records), 46.2-1539 (Inspection of vehicles required), 46.2-1544 (Certificate of title for dealers) and 46.2-1575 (1) (Material misstatement), (2) (Non compliance to written warning). Based on the information provided at the conference, the hearing officer recommended that a civil penalty of \$1,000 be assessed; however, if Mr. Smith successfully completes the Dealer-Operator course, he recommends a \$500 reduction in penalties.

Motion was made by Joe Tate to accept the hearing officer's recommendation and for the dealership to prove that all title issues are resolved, if not, then suspension of all licenses, until it is resolved.

Members of the Committee believed that some of the actions of Mr. Smith were very serious, especially selling vehicles without first conducting a safety inspection. Given the serious nature of the violations a substitute motion was made by Kevin Reilly to suspend all licenses until titles are delivered; refer this matter to DMV; to assess a civil penalty of \$2,000; and to complete the dealer-operator course. Joe Tate seconded. The motion carried unanimously. **NOTE:** 9:57 a.m., Frank McCormick reported that all the titles were delivered.

- **Motorvation and John Almstead.** On February 7, 2013, an informal fact-finding conference was conducted to address the alleged violations VA Code Sections 46.2-1510 (Dealers required to have established place of business), 46.2-1529 (Dealer records), 46.2-1547 (Insurance required), 46.2-1548 (Transferable license plates), 46.2-1575 (2) (failure to comply), (3) (established place of business) and (7) (advertising). Based on the information provided at the conference, the hearing officer recommended revocation of all licenses and/or certificates of registration or qualifications and assess a civil penalty of \$6,000.

Motion was made by Kevin Reilly to accept the hearing officer's recommendation. Matt McQueen seconded. The motion carried unanimously.

- **Five Star Used Auto, Inc. and Nidal Motii.** On April 8, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1539 (Inspection of vehicles required), 46.2-1575 (1) (Material misstatement) and 46.2-1575 (9) (having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended that Mr. Motii retain his salesperson's license and a \$500 civil penalty be assessed.

Members of the Committee believed that some of the actions of Mr. Smith were very serious. Given the serious nature of the violations a motion was made by Joe Tate to assess a civil penalty of \$3,500 and revoke all licenses and certificates. Jimmy Whitten seconded. The motion carried unanimously.

- **Select Cars of Thornburg and Wilmer A. Nunez Villatoro.** On April 8, 2013, an informal fact-finding conference was conducted to address the alleged violations VA Code Section 46.2-1575 (9) (having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended a \$500 civil penalty be assessed and to have another follow-up successful inspection.

Members of the Committee believed that some of the actions of Mr. Smith were very serious, especially removing safety inspection stickers from one car and attaching them to another. Given the serious nature of the violations a motion was made by Jimmy Whitten to assess a civil penalty of \$1,000 and revoke all licenses and certificates. Joe Tate seconded. The motion carried unanimously.

Review and Action: Formal Hearing:

- **Quality Auto Group, Inc. and Kevin J. Brown.** Historical overview leading up to the formal hearing: On October 20, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575 (6) (having used deceptive acts or practices) and (9) (having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended assessing of \$34,000 and to revoke all licenses and certificates issued by the Board to Kevin J. Brown. The Board adopted a resolution at its November 5, 2012 meeting to assess a civil penalty of \$34,000 and to revoke all licenses and certificates issued by the Board to Kevin J. Brown. On December 6, 2012, Mr. Smith appealed the decision and requested a formal hearing. On March 22, 2013, a formal hearing was conducted. Based on the information provided at the conference the hearing officer recommended assessing a civil penalty of \$34,000 and revocation of all licenses and qualification certificates issued to Mr. Brown and Quality Auto Group, Inc.

Motion was made by Joe Tate to accept the hearing officer's recommendation. Matt McQueen seconded. The motion carried unanimously.

- **We Finance Auto and Gary R. Cowand.** Historical overview leading up to the formal hearing: On September 7, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1518 (display of salesperson's license; notice of termination), 1529 (failure to maintain all dealer records on the premises of the licensed location), 1530 (failing to maintain buyer's orders), 1533 (failing to maintain business hours), 1537 (failure to license and employ all salespersons), 1542 (failure to properly issue temporary tags), 1547 (failure to maintain liability insurance), 1548 (dealer plate records required), 1550 (improper use of or permitting the improper use of dealer's license plates), 1550(2) (issuance and use of temporary plates, permanent record), 1559 (violation of record keeping for temporary tags), 1574 (failure to be responsible for the acts of the dealers salespersons) and 1575 (1) (material misstatements), 1575(2) (failure to comply with a written warning) and 46.2-1575 (18) (failure to maintain auto liability insurance for all dealer plates assigned). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$6,000, suspend all licenses and qualifications for a period of six months and to successfully complete the Dealer-Operator course. The Board adopted a resolution at its November 5, 2012 meeting to assess a civil penalty of \$15,000 and to revoke all licenses and certificates issued by the Board to Gary R. Cowand and We Finance Auto. December 10, 2012, Mr. Cowand appealed and requested a formal hearing. On March 5, 2013, a formal hearing was conducted. Based on the information provided at the hearing, the hearing officer recommended assessing a civil penalty of \$6,500 and revocation of all licenses indefinitely.

Bill Lehner spoke on behalf of his client, Mr. Gary Cowand. Mr. Lehner indicated that Mr. Cowand would like to volunteer the closing of his dealership.

Motion was made by Jimmy Whitten to assess a civil penalty of \$3,500 and to give Mr. Cowand until June 7, 2013 to close his business. If Mr. Cowand does not close by this date, then all licenses and certificates will be revoked. Joe Tate seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for July 8, 2013

The meeting adjourned at 9:58 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, May 13, 2013

Chairman Jimmy Whitten called the Dealer Licensing Committee meeting to order in Room 702 at 9:58 a.m. DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Andy Alvarez, Roy Boswell, Art Hudgins, Brian Hutchens, Wanda Lewark, George Pelton and Joe Tate. (Absent: Sally Woodson) Other Board members present: Tommy Woodson, Kevin Reilly, Rick Holcomb, Lynn Hooper, Thomas Moorehead, Ted Bailey. Executive Director Bruce Gould, Frank McCormick, Peggy Bailey, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The March 11, 2013 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR:

Tesla: Rick Holcomb indicated that Tesla has not been approved a license to be a manufacturer of this vehicle in the state of Virginia. Kevin Reilly indicated that Tesla is a California-based company that manufactures electric cars. They recently opened a facility in Northern Virginia. Questions were raised about this facility and if they are undertaking activities at this facility that would constitute selling motor vehicles. Rick Holcomb suggested that because this issue was not on the Agenda, and because Tesla was not invited to attend this meeting, that they should be invited to the July meeting under Dealer Practices and give the opportunity to discuss the Northern Virginia facility. Also the members discussed the letter from Tesla that outlined what they are doing in Northern Virginia. Executive Director Bruce Gould suggested sending a field representative to collect information regarding Tesla and place it on the July Agenda for the Dealer Practices meeting to be discussed. The Board members could also send questions to the Executive Director who could then send these questions to Tesla in the form of a letter. Rick Holcomb also indicated that he's willing to call a special Full Board meeting in June, prior to the July 8 meeting, to discuss the results of the field representative's findings and to discuss the questions being answered by Tesla. Consensus of the members is to hold this special meeting June 3, 2013 to present the field's findings and invite Tesla to attend.

NEW BUSINESS

Review and Action: Information Fact-Finding Conference:

- **Sajal Narayan, Salesperson.** On March 12, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-618 (Unlawful to have in possession certificate of title issued to another), 46.2-1532 (Odometer disclosure), 46.2-1550 (Use of dealer's license plates), 46.2-1575 (6) (Having used deceptive acts or practices), (9)

(Having been convicted of any criminal act involving the business of selling vehicles) and (10) (Willfully retaining in his possession title to a motor vehicle that has not been completely and legally assigned to him). Based on the information provided at the hearing, the hearing officer recommended not taking any further action against Sajal Narayan.

Motion was made by George Pelton to accept the hearing officer's recommendation. Wanda Lewark seconded. The motion carried unanimously.

- **David W. Neighbors, Salesperson.** On March 26, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1529 (Failing to maintain dealer records), 46.2-1550 (Use of dealer's license plates), 46.2-1575 (1) (Material misstatement) and (9) (Having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the hearing, the hearing officer recommended assessing a civil penalty of \$3,000 and revocation of his salesperson's license, and that Mr. Neighbors never be eligible for a license in the state of Virginia.

Motion was made by Joe Tate to accept the hearing officer's recommendation to assess a \$3,000 civil penalty and to revoke all licenses and certificates issued by the Board to Mr. Neighbors. Art Hudgins seconded. The motion carried unanimously.

- **Rodney L. Williams, Salesperson.** On April 8, 2013, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575 (1) (Material misstatement) and (9) (Having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the hearing, the hearing officer recommended assessing a civil penalty of \$500 and allowing Mr. Williams a sales license. Mr. Williams should not be considered for a dealership license for a minimum of five years because of the issues with his past dealership.

Mr. Williams was present and spoke on his own behalf.

Motion was made by Wanda Lewark allow Mr. Williams to be licensed as a salesperson. George Pelton seconded. The motion carried unanimously.

Review and Action: Formal Hearing:

- **Reza Azizkhani.** Historical overview leading up to the formal hearing: On October 18, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1575 (6) (Deceptive acts or practices) and (13) (Having been convicted of a felony). Based on the information provided at the hearing, the hearing officer recommended that Mr. Azizkhani be allowed a license to sell motor vehicles in the Commonwealth of Virginia. On December 3, 2012, Bruce Gould carefully reviewed the findings of fact, the evidence from the court, the conclusions of law, the hearing officer's report and the testimonies given at the hearing and determined that his application to become licensed to sell motor vehicles should be denied. On December 27, 2012, the board staff received Mr. Azizkhani's appeal and requested a formal hearing. On March 5, 2013, a formal hearing was conducted to address the alleged violations as mentioned above. Based on the information provided at the hearing, the hearing officer recommended that Mr. Azizkhani be allowed a license to sell motor vehicles.

Mr. Azizkhani was present and spoke on his own behalf.

Motion was made by Ted Bailey to allow Mr. Azizkhani to retain his license. Roy Boswell seconded. The motion carried unanimously.

Chairman Holcomb expressed concerns of some the hearing officer's recommendations. He would like for the hearing officer's to be reminded of what they can and cannot recommend, due process, etc.

- **Arthur Gregory.** Historical overview leading up to the formal hearing: On December 19, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section 46.2-1575 (13) (having been convicted of a felony). Based on the information provided at the hearing, the hearing officer recommended that Mr. Gregory be allowed to receive a salesperson's license. Bruce Gould carefully reviewed the findings of fact, the evidence from the court, the conclusions of law, the hearing officer's report and the testimonies given at the hearing and determined that his application to become licensed to sell motor vehicles should be denied. On February 7, 2013, the board staff received Mr. Gregory's appeal and requested a formal hearing. On February 26, 2013, a formal hearing was conducted to address the denial of the sales person's license. Based on the information provided at the hearing, the hearing officer recommended denying Mr. Gregory's application for a motor vehicle salesperson's license.

Motion was made by Joe Tate to deny Mr. Gregory's application to be licensed. Roy Boswell seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor

The next meeting was scheduled for July 8, 2013.

The meeting adjourned at 11:22 a.m.

Meeting Summary
Advertising Committee
Monday, May 13, 2013

Chairman Kevin Reilly called the Advertising Committee meeting to order in Room 702 at 11:22 a.m., DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Andy Alvarez, Chip Lindsay, Matt McQueen, George Pelton and Tommy Woodson. (Absent: Ron Kody, Rodney Williams and Sally Woodson). Other Board members present: Art Hudgins, Brian Hutchens, Roy Boswell, Rick Holcomb, Lynn Hooper, Jimmy Whitten, Thomas Moorehead, Joe Tate and Wanda Lewark. Executive Director Bruce Gould, Peggy Bailey, Frank McCormick, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The March 11, 2013 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

The next meeting was scheduled for July 8, 2013.

NEW BUSINESS FROM THE FLOOR

The meeting adjourned at 11:27 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, May 13, 2013

Chairman Lynn Hooper called the Transaction Recovery Fund Committee meeting to order at 11:27 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Andy Alvarez, Ted Bailey, Roy Boswell, Brian Hutchens, Matt McQueen, Thomas Moorhead and Kevin Reilly. Other Board members present: Tommy Woodson, Rick Holcomb, Jimmy Whitten, Chip Lindsay, Joe Tate, Wanda Lewark and George Pelton. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Frank McCormick, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The March 11, 2013 summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference Results:

Scott Kapel and Automix, Inc. On January 7, 2010, Scott Kapel visited Automix, Inc. to purchase a 2003 Land Rover which had been advertised online by Automix. When Scott Kapel arrived at the dealership, he asked to see the vehicle, as advertised. Gerald Kazembe (Gerald), a licensed salesperson for Automix indicated the vehicle was not on the lot, but was being kept at a different dealer's lot. He then took Scott Kapel to the different dealer's lot, and showed the vehicle to Mr. Kapel. Mr. Kapel agreed to purchase the 2003 Land Rover from Automix. Mr. Kazembe completed a Buyer's Order and arranged for extended credit and completed a Retail Installment Contract for Mr. Kapel. The Buyer's Order reflects the base price as \$9827.38 + \$295.00 processing fee making the total vehicle price of \$10,122.38. In addition, Automix collected fees to include a warranty for \$1,295.00; license fee of \$41.50; tax \$303.67; dealer business license tax of \$17.21; GAP insurance \$295 and then credited \$1,500.00 leaving a balance owed in the amount of \$10,574.76.

Although, Mr. Kapel fully complied with his obligations under the Buyer's Order and Retail Installment Contract, Automix failed to register the vehicle in Scott Kapel's name or deliver the vehicle to him. Ultimately, Mr. Kapel sought legal counsel (Thomas R. Breeden, Esquire) in order to pursue the dealer civilly in court for his monetary loss in connection with the purchase. In July, 2010 Thomas Breeden, Esquire on behalf of Scott Kapel filed a "Complaint & Demand" for a jury trial in the Circuit Court of Arlington County against Automix, Inc.

Pursuit to Va. Code §46.2-1527.4, on August 3, 2010, the Dealer Board received the "Complaint" that had been filed in the Circuit Court of Arlington County against Automix, Inc. The Complaint is based on four separate causes of action – (1) False pretenses; (2) Conversion; (3) Violations of the Virginia Consumer Protection Act; and (4) Breach of Warranty.

On August 4, 2010, the Dealer Board staff acknowledged receipt of Scott Kapel's possible claim against the Motor Vehicle Transaction Recovery Fund. After a careful preliminary review, pursuant to §46.2-1527.2 staff referred counsel client's claim to the dealers surety bonding company. On November 2, 2011, the Dealer Board received from counsel (Thomas Breeden) on behalf of Scott Kapel a "Notice and Motion for Summary Judgment and Other Relief" that was filed against Automix, Inc. in the Circuit Court of the County of Arlington. On December 2, 2011, the Circuit Court of the County of Arlington awarded Scott Kapel judgment against Automix, Inc. for fraud and failure to comply with Va. Code §46.2-1530 and 1542 for a total amount of \$418,377.68 (\$15,000 compensatory damages; \$45,000 statutory treble damages; \$350,000 punitive damages; \$7,870 attorney fees and \$507.68 court costs). On November 26, 2012, the Dealer Board received a copy of the letter submitted by Thomas Breeden, Esquire on behalf of his client to the dealer's surety bonding company (Nova Casualty) making a claim against the bond. On March 11, 2013, the Dealer Board received a letter from Thomas Breeden, Esquire with a full Release and Assignment from Nova Casualty signed by Scott Kapel authorizing payment of the remaining bond for Automix in the amount of \$1,295.01.

Staff believed that Mr. Kapel's claim meets the criteria for payment from the Fund, pursuant to Virginia Code §46.2-1527.3. Judgment was awarded in a court of competent jurisdiction in the Commonwealth of Virginia. Counsel submitted prior notification to the Board, pursuant to Virginia Code §46.2-1527.4. On March 1, 2013, pursuant to Virginia Code §46.2-1527.2, the dealer's surety bonding company (Nova Casualty Company) paid the remaining bond liability in the amount of \$1,295.01. Nova has now exhausted their \$50,000.00 liability of claims. The Transaction Recovery Fund has paid a total of \$32,025.90 in claims against Automix, Inc. Counsel is requesting reimbursement on his client's claim from the Fund in the amount of \$20,000.00. The Dealer Board staff is requesting that the Recovery Fund Committee and full Board approve Scott Kapel's claim against the Fund in the amount of \$17,974.10, this amount is based on the remaining liability of the Fund. (\$50,000.00 minus \$32,025.90 of claims paid from the Fund leaving a balance of \$17,974.10).

On April 22, 2013, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment from the fund in the amount of \$17,974.10.

Motion was made Kevin Reilly to accept the hearing officer's recommendation. Matt McQueen seconded. The motion carried unanimously.

Du-Shawn K. Hooks and J & C Auto Sales. On April 21, 2010, Mr. Hooks entered into a contract with J & C Auto Sales for the purchase of a 2006 Mazda, with a base price of \$11,995.00 plus a processing fee of \$500.00, making the total vehicle price of \$12,495.00. Mr. Hooks repeatedly asked the licensed salesperson (Kevin Smith) if there was anything wrong with the vehicle and had it had any prior damage, to which Mr. Smith replied that the vehicle was reliable, in good condition and was perfectly good with only 27,000 miles. In connection with the purchase, Mr. Hooks made a down payment of \$1,000.00 plus traded-in a 1998 Pontiac Grand Am and was given an allowance of \$500.00. J & C Auto Sales completed the Buyer's Order and included an additional fee of \$458.84 for the license fee, title fee, sales tax, dealer business tax and on-line filing fee.

Merced Jesolva-Diggs, owner and/or Mr. Smith, licensed salesperson of J & C Auto Sales, pretending to be Mr. Hooks, completed an online application for credit at Navy Federal Credit Union (NFCU) and obtained a loan for the remaining balance owed in the amount of \$11,453.84 for the purchase of the vehicle. Along with the sale of the vehicle, Mr. Hooks received written warranties and other express and implied warranties including warranties from the dealership. Shortly after the purchase, Mr. Hooks contacted the dealership with regards to the mechanical difficulties he was experiencing with the vehicle. He was advised by a representative of the dealership to wait 30 days until the extended warranty was operational in order to get further repairs made. On July 10, 2010, the engine exploded due to failure of the crankshaft bearing and a broken cylinder rod. Mr. Hooks attempted to return the vehicle to J & C Auto Sales, however, they refused. After the refusal to remedy the issue, Mr. Hooks took the vehicle to a local Mazda dealership for factory warranty repairs and was advised of the prior history of the vehicle. J & C Auto Sales had itself experienced mechanical difficulties with the vehicle and had presented it to the factory dealership for repairs, and was immediately told that the car had a history of major mechanical defects from the same service writer who had advised them of the voided factory warranties. Mr. Hooks replaced the damaged engine with a remanufactured engine in the vehicle at his own expense at a cost of \$3,797.86. The vehicle requires further repairs that have been quoted at over \$823.25 due to damages to other components when the engine exploded. Ultimately, Mr. Hooks is being held liable on the loan for a vehicle that has no resale value due to its history. Mr. Hooks then contacted legal counsel in order to pursue the dealership civilly in court for his monetary relief.

On April 19, 2012, Robert Stenzhorn, Esquire on behalf of Mr. Hooks submitted to the Dealer Board the "Complaint" that had been filed in the Circuit Court for the City of Hampton against Merced Jesolva, Inc. t/a J & C Auto Sales and Merced Jesolva-Diggs. The "Complaint" is based on seven (7) separate causes of action- (1) Fraud; (2) Breach of Expressed Warranties; (3) Breach of Implied Warranty of Merchantability; (4) Revocation of Acceptance; (5) violation of Va. Consumer Protection Act; (6) Breach of Contract; and (7) Rescission of Contract. [Dealer Board received 04/20/2012]

On April 30, 2012, the Dealer Board staff received a letter from Mr. Stenzhorn acknowledging the Board's letter and informing the Board that they have no basis for maintaining Ms. Merced Jesolva-Diggs in the action personally as the corporate formalities appear to have been maintained. However, they will be moving forward against the dealership Merced Jesolva, Inc. t/a J & C Auto Sales. On November 13, 2012, the Circuit Court for the City of Hampton awarded Mr. Hooks a default judgment against Merced Jesolva, Inc. t/a J & C Auto Sales in the amount of \$49,248.23.

On December 12, 2012, Mr. Stenzhorn submitted to the Dealer Board documentation for consideration of reimbursement for the maximum of \$25,000.00 from the Fund on his client's claim. On April 3, 2013, Mr. Stenzhorn via facsimile, submitted to the Dealer Board staff additional documentation regarding Mr. Hooks claim against the Fund. Counsel submitted a copy of a check in the amount of \$500 that was paid for mechanics evaluation of the engine failure and counsels breakdown of hours for the basis of court's award for attorney fees.

After carefully reviewing all the documentation, Board staff believes Mr. Hook's claim meets the criteria for payment from the Fund. Further, pursuant to Va. Code §46.2-1527.5, which states that the maximum claim of one judgment creditor against the Fund based on an unpaid final judgment arising out of any loss or damage by reason of a claim submitted under §46.2-1527.2 or §46.2-1527.3 involving a single transaction shall be limited to \$25,000.00 regardless of the amount of the unpaid final judgment of one judgment creditor. Therefore, given the facts and code sections governing the Fund, the Dealer Board staff is recommending that the Recovery Fund Committee and full Board approve Mr. Hook's claim in the amount of \$19,746.45, this amount is based on the damages for the purchase price of (\$12,495.00); title, tax, purchase fees (\$458.84); repairs of engine (\$3,797.86) and repairs to Air Comp. estimate (\$823.25); costs of action (\$684.00); and attorney fees of (\$1,487.50).

On April 22, 2013, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended payment from the fund in the amount of \$19,746.45.

Merced Jesolva-Diggs was present and spoke on her own behalf.

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Art Hudgins seconded. Ted Bailey abstained because of a working relationship with Ms. Jesolva-Diggs. The motion carried.

Rodney E. Witner and Horton Truck & Equipment Company. On September 9, 2008, Mr. Witner purchased a 2005 Chevrolet truck, from Kelly D. Horton, owner of Horton Truck & Equipment Company (Horton) for a cash price of \$35,000.00. Mr. Witner did not take delivery of the truck because the dealership was going to perform some repairs to the vehicle, and Mr. Witner did not need the truck immediately as he spent much of his time sailing. Mr. Witner and Mr. Horton, had worked together and were friends, so Mr. Witner had no concerns about leaving the truck with him. At some point, Mr. Witner decided he did not need the truck and asked Mr. Horton to sell it for him, which he agreed. When Mr. Witner asked Mr. Horton regarding the status of the truck over the course of approximately one (1) year, Mr. Horton assured him the truck was at the dealership and he could have the truck or return his money.

In October, 2009, Mr. Witmer inquired about the truck and Mr. Horton finally informed him that the truck had been sold, but the money had been spent due to financial problems. Mr. Horton apologized and promised Mr. Witmer that he would pay him by giving him a small boat and making installments amounting to thirty thousand dollars (\$30,000.00). In June, 2010, Mr. Witmer was involved in a serious sailing accident and contacted Mr. Horton to take delivery of the boat. However, the boat had been sold. At this point, Mr. Witmer realized that Horton had never intended to pay him and sought legal counsel in order to pursue Horton Truck & Equipment Co. for his monetary loss. In October, 2011, Patricia M. Anderson, Esquire on behalf of Ronald Witmer filed a civil suit against Horton Truck & Equipment Company in the Circuit Court for the County of Fairfax. On January 31, 2012, Patricia Anderson, Esquire on behalf of Ronald Witmer submitted to the Dealer Board the "Civil Complaint" that had been filed against Horton Truck & Equipment Company and provided documentation regarding her client's possible claim against the Fund. The "Civil Complaint" is based on actual and constructive fraud.

On February 10, 2012 the Circuit Court for the County of Fairfax awarded Ronald Witmer a default judgment against Horton Truck & Equipment Company for fraud in the amount of \$35,000.00, plus \$296.00 in costs and \$65.00 in service fees. On February 8, 2013, Ms. Anderson delivered to the Dealer Board documentation for consideration of the payment for the maximum of \$20,000.00 from the Fund.

Staff believed that Mr. Witmer's claim, in part, meets the criteria for payment from the Fund, pursuant to §46.2-1527.3. Judgment was awarded in a court of competent jurisdiction in the Commonwealth of Virginia. Further, under §46.2-1527.3, in relevant part states who is eligible for recovery from the Fund: "Whenever any person is awarded a final judgment in a court of competent jurisdiction in the Commonwealth for (1) **any loss or damage in connection with the purchase or lease of a motor vehicle** by reason of any fraud practiced on him or fraudulent representation made to him by a licensed or registered motor vehicle dealer or one of a dealer's salespersons . . ." (Emphasis added.). Pursuit to Va. Code §46.2-1527.5, the maximum claim of one judgment creditor against the Fund based on an unpaid judgment arising out of any loss or damage by reason of a claim submitted under §46.2-1527.2 or §46.2-1527.3 involving a single transaction shall be limited to \$20,000.00. [Limitations of recovery from the Fund- This claim falls under the Va. Motor Vehicle Dealer Licensing Laws of July, 2011]. Further, under Va. Code §46.2-1527.5, excluded from the amount of any unpaid final judgment on which a claim against the Fund is based shall be any sums representing (i) interest, (ii) punitive damages, and (iii) exemplary damages.

Historically, the Board's staff would make a recommendation prior to an Informal Fact-Finding Conference. Staff is not unsympathetic to Mr. Witmer's situation and staff does believe he was defrauded by the dealer. However, it appears that the fraud committed was in connection with the sale of the truck and not in connection with the purchase. Mr. Witmer is unable to provide a Buyer's Order but has provided a copy of canceled check (\$35,000) showing it was for a 2005 Chevrolet truck. Further, he does not have a written consignment agreement; staff believes this was a verbal agreement between Mr. Witmer and Mr. Horton. Therefore, given the facts and Code sections governing the Fund, the Dealer Board staff requested the expertise of the Recovery Fund Committee and Full Board in determining whether to deny or approve Mr. Witmer's claim in the amount of \$20,000.00.

On April 22, 2013, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that the claim should not be considered.

Patty Anderson, attorney for Mr. Witmer, was present and spoke on behalf of her client.

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Art Hudgins seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for July 8, 2013.

The meeting adjourned at 12:08 p.m.